



A Consultation on Preventing the Electronic Suppression of Sales in Ontario

Ontario Economic Development Society

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Acknowledgements

This submission reflects the input received by the Ontario Economic Development Society over the course of several weeks. The recommendations herein reflect the consensus positions of our membership.

About the Ontario Economic Development Society

Incorporated in 2014 and operating since 2013, the Ontario Economic Development Society (OEDS / OntarioEDS) serves as the politically neutral voice of the millennial generation. Our mission is to support economic growth in Ontario by advancing efficient and sustainable economic policies to the Ontario Government on behalf of students executing economic development research.

The team at OntarioEDS is devoted to working with government through public consultations to help discover better business policies.



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To the Ontario Ministry of Finance

Thank you for the opportunity to respond to the Ontario Ministry of Finance discussion paper, *Preventing the Electronic Suppression of Sales in Ontario*.

We look forward to helping you gain insight into the issue of Electronic Suppression of Sales (ESS) in Ontario. We hope that this submission serves as a complimentary aid to facilitate a comprehensive understanding ESS issues in Ontario.

The suppression of electronic sales in Ontario contributes greatly to the province's 15.3 billion dollar underground economy. A technology-based solution to the Electronic Suppression of Sales issue will only be effective insofar as compliance to the solution can be enforced and the law serves as an actual deterrent.

The discussion paper released by the Ministry, *Preventing the Electronic Suppression of Sales in Ontario*, acknowledges that it is hard to detect the use of ESS software. Therefore, the concern of this paper will be deterrence and enforcement policy strategies that would increase compliance.

Notably, this review is limited to considering deterrence and enforcement frameworks concerning the prevention of electronic suppression of sales in Ontario while excluding tech-based solutions.

SUMMARY OF RECOMMENDATIONS

This policy resolution considers a deterrence framework for regulating the electronic suppression of sales in Ontario. Sally Simpson's book, *Corporate Crime, Law, and Social Control*, provides leading edge research in order "to review, evaluate and consider the corporate crime deterrence model".¹ It has been found that "one theoretical model that has shown much promise in understanding criminal decision making in the corporate world is rational choice theory".² Gary S. Becker was among pioneers of this theory in the early 1970's and "established the basic economics-of-crime methodology. This approach treats criminal activity as a rational individual decision that depends upon probabilities of detection and conviction and levels of punishment".³ Now consider that Simpson reasonably argues, "harsh sanctions are more powerful deterrents than punishments that are inconsequential".⁴ Accordingly, the policy resolution advanced herein argues to increase in the initial minimum fine that was set at \$5000.00 by the *2015 Ontario Budget* when it amended the *Taxation Act 2007*.⁵ Moreover, this paper argues that compliance would increase if individuals were better incentivized to report on suspected cases of ESS software use. Therefore, the second recommendation seeks modifications to the CRA informant leads program in order to strengthen enforcement by creating better incentive models for individuals to report suspected tax evasion.

¹ Sally Simpson, *Corporate Crime, Law, and Social Control* (Cambridge: Cambridge University Press, 2002) at 20.

² Pamela J. Schram, Stephen G. Tibbetts, *Introduction to Criminology: Why Do They Do It?: Why Do They Do It?* (United States: SAGE publications Inc., 2014) at 354.

³ Michael J. Graetz et al., "The Tax Compliance Game: Toward an Interactive Theory of Law Enforcement" (1986) 2:1 J Law Econ Organ 1 at 2 online:
<<http://www.jstor.org.proxy.library.carleton.ca/stable/pdf/764914.pdf?acceptTC=true>>

⁴ [Simpson] *Supra* note 1.

⁵ Ontario Ministry of Finance, online:

<<http://www.fin.gov.on.ca/en/consultations/salessuppression/electronic-suppression-sales.html>>.

Recommendation 1

Increase initial minimum fines to an amount that is proportionate to the tax the business attempted to shelter – rather than having fines pegged to an arbitrary \$5000.00 minimum.

Firstly, consider that Simpson notes, “the punitive model of corporate crime control has support from both sides of the ideological spectrum”.⁶ She finds “the perceived inadequacies of the criminal justice process are at least partially responsible for... supporting a harsher response to corporate crime”.⁷ Now consider that a deterrence model responding to tax evasion schemes was adopted by the U.S. congress where they enacted legislation in 1981, 1982, and 1984 providing new and increased penalties for tax fraud.⁸ Specific examples include “penalties for substantial understatements of tax liabilities; for aiding and abetting understatements of tax liabilities; for the filing of frivolous returns... Criminal fines also were increased”.⁹ Scholars note that “in adopting these measures, Congress explicitly embraced an economic approach to the noncompliance problem”.¹⁰ The current legislative deterrence framework in Ontario imposes a non-threatening \$5,000 minimum penalty that allows businesses to calculate a lower risk in failing to comply with tax obligations than if the penalty was higher. Although the second minimum penalty is at the dramatically higher amount of \$50,000 – it is argued that a deterrence model with a non-threatening initial penalty will cause businesses to try to evade taxes until they get caught for their first time (if they ever do get caught). Businesses engaging in tax sheltering activities of \$100,000+ dollars, for example, should not be subject to the same minimums as those attempting to shelter only

⁶ *Ibid* at 10.

⁷ *Ibid* at 11.

⁸ [Graetz] *Supra* note 3 at 2.

⁹ *Ibid*.

¹⁰ *Ibid*.

\$5,000. Therefore, the initial fine should be increased to an amount that is proportionate to the amount of taxes a business attempts to shelter rather than an arbitrarily set \$5,000 minimum for all companies. This would increase compliance and provide a greater deterrent to businesses contemplating ESS activities.

Recommendation 2

Improving CRA Leads program

It is true that “tax enforcement is also, of course, a problem of law enforcement”.¹¹ Studies have found that “evasion has been reduced through third-party reporting, which increases the odds of detection (in some cases, to a near-certainty) and audits”.¹² It is with this in mind that consideration is given to the CRA Informant Leads Program.¹³ Herein, the opportunity to offer monetary rewards to CRA informants who provide information resulting in the successful identification of tax evading businesses is brought to light. Notably, the ‘CRA Leads FAQ’ section explains that the benefits afforded to an individual for reporting tax fraud is the knowledge that they are “helping to ensure that all taxpayers are paying their fair share of taxes and this benefits all Canadians”.¹⁴ Although a noble goal in principle – a model providing a percentage of the taxes recovered, or another monetary reward, would more likely motivate individuals to make reports and therefore increase tax compliance.

¹¹ James Andreoni et al., “Tax Compliance” (1998) 36:1 J. Econ. Lit. 818 at 818 online:

<http://www.jstor.org.proxy.library.carleton.ca/stable/2565123?seq=1#page_scan_tab_contents >

¹² Joseph Bankman et al., “Using The ‘Smart Return’ To Reduce Tax Evasion” (2015) 20:1 Stanford Public Law 1 at 1 online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2578432>

¹³ Canada Revenue Agency, *Informant Leads Program*, (Scarborough: Business Intelligence and Quality Assurance Division, 2015) online: <<http://www.cra-arc.gc.ca/leads/>>.

¹⁴ *Ibid.*

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